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Attorneys for Defendant

PACIFIC GAS AND ELECTRIC COMPANY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FRIENDS OF THE EEL RIVER; PACIFIC
COAST FEDERATION OF FISHERMEN'S
ASSOCIATIONS; INSTITUTE FOR
FISHERIES RESOURCES; CALIFORNIA
TROUT; AND TROUT UNLIMITED,

Plaintiffs,

v.

PACIFIC GAS AND ELECTRIC
COMPANY,

Defendant.

CASE NO.: 3:23-CV-02379-JD

**JOINT STIPULATION AND [PROPOSED]
ORDER TO STAY CASE PENDING
RESOLUTION OF PLAINTIFFS'
PETITIONS IN THE NINTH CIRCUIT**

Assigned for all purposes to the Hon. James
Donato

Case Filed: May 16, 2023

Trial Date: None Set

1 Plaintiffs Friends of the Eel River, Pacific Coast Federation of Fishermen’s Associations,
 2 Institute for Fisheries Resources, California Trout, and Trout Unlimited (“Plaintiffs”) and Defendant
 3 Pacific Gas and Electric Company (“Defendant”) (collectively, the “Parties”), by and through their
 4 respective counsel of record, hereby stipulate as follows:

5 WHEREAS, Plaintiffs filed a complaint in this action on May 16, 2023 (ECF No. 1);

6 WHEREAS, by Order dated June 1, 2023 (ECF No. 12), this matter was reassigned to Judge
 7 Donato following the filing of a declination to proceed before a U.S. Magistrate Judge by the
 8 Plaintiffs;

9 WHEREAS, on August 18, 2023, Plaintiffs filed a Notice of Pendency of Other Action or
 10 Proceeding identifying two consolidated petitions for review filed by Plaintiffs in the U.S. Court of
 11 Appeals for the Ninth Circuit pursuant to 16 U.S.C. § 825l(b) challenging the Federal Regulatory
 12 Energy Commission’s issuance of an annual license to Defendant for continued operation of the
 13 Potter Valley Project: *Friends of the Eel River, Pacific Coast Federation of Fishermen’s*
 14 *Associations, Institute for Fisheries Resources, California Trout, and Trout Unlimited v. Federal*
 15 *Energy Regulatory Commission* (9th Cir. Case No. 22-70182 (consolidated with case no. 22-1589))
 16 (“Plaintiffs’ Petitions”) (ECF No. 27);

17 WHEREAS, Defendant timely filed a Rule 12(b) Motion to Dismiss this action, along with a
 18 request for judicial notice, on September 8, 2023, with a hearing date set for November 9, 2023
 19 (ECF Nos. 30, 31). Defendant’s Rule 12(b) Motion moves to dismiss the entire action on the basis
 20 that the Court lacks subject matter jurisdiction and Plaintiffs have failed to state a claim upon which
 21 relief can be granted. Plaintiffs opposed the Motion to Dismiss. Briefing on the Motion was
 22 completed with the filing of Defendant’s reply brief on October 20, 2023 (ECF No. 37);

23 WHEREAS, pursuant to the Court’s September 8, 2023 order (ECF No. 29), the initial Case
 24 Management Conference was held on October 5, 2023. At the Conference, the Court questioned
 25 why the matter should not be stayed, as a matter of judicial economy and to avoid conflicting
 26 outcomes, until the Ninth Circuit reaches a decision on Plaintiffs’ Petitions. As a result, the Court
 27 directed the Parties to file, by November 1, 2023, simultaneous statements of no more than 10 pages
 28 each addressing whether the case should be stayed pending resolution of Plaintiffs’ Petitions in the

Ninth Circuit, and to provide the Court with the one best document identifying the issues in the circuit cases. At the conclusion of the Conference, the Court stayed the case in all respects except with respect to (i) its direction to file briefs on a potential stay and (ii) the briefing deadlines for Defendant's Motion to Dismiss, pending further order (ECF No. 34); and

WHEREAS, since the October 5 Conference, the Parties have met and conferred and agree that staying this action in its entirety pending resolution of Plaintiffs' Petitions in the Ninth Circuit is in the interest of conserving judicial resources, avoiding the time and expense of briefing the stay issue for the Court, and continuing good-faith settlement negotiations.

**IT IS HEREBY STIPULATED AND AGREED, AND RESPECTFULLY
REQUESTED AS FOLLOWS:**

1. The case shall be stayed in its entirety pending resolution of Plaintiffs' Petitions, Case Nos. 22-70182 and 22-1589, in the Ninth Circuit Court of Appeals;
2. During the pendency of the stay, the Parties may continue settlement discussions and, in the event a settlement is reached, shall notify the Court;
3. As a result of this stipulation, the Parties need not file simultaneous briefs or a document identifying the issues in the Ninth Circuit cases by November 1 as otherwise specified in the Court's October 5, 2023 Minute Order; and
4. The hearing on Defendant's Motion to Dismiss set for November 9, 2023 shall be taken off calendar.

IT IS SO STIPULATED.

DATED: October 31, 2023

Respectfully submitted,

HOGAN LOVELLS US LLP

By: /s/ J. Tom Boer

J. Tom Boer

Olivia Molodanof

Attorneys for Defendant

Pacific Gas and Electric Company

1 DATED: October 31, 2023

EARTHJUSTICE

2 By: /s/ Katrina A. Tomas
3 Anna K. Stimmel
4 Katrina A. Tomas

5 *Attorneys for Plaintiffs*
6 *Pacific Coast Federation of Fishermen's*
7 *Associations and Institute for Fisheries*
8 *Resources*

7 DATED: October 31, 2023

SHUTE, MIHALY & WEINBERGER LLP

8 By: /s/ Kevin P. Bundy
9 Kevin P. Bundy
10 Matthew S. McKerley

11 *Attorneys for Plaintiffs*
12 *Friends of the Eel River, California Trout and*
13 *Trout Unlimited*

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____, 2023

By: _____
Honorable Judge James Donato
United States District Judge

ATTESTATION
(Civ. L.R. 5-1(i)(3))

I hereby attest that each signatory indicated by a conformed signature (/s/) within this e-filed document has concurred in the filing of this document. I further attest that I have, and will maintain, records to support this concurrence in accordance with Civil Local Rule 5-1(i)(3).

Respectfully submitted,

DATED: October 31, 2023

HOGAN LOVELLS US LLP

By: /s/ J. Tom Boer

J. Tom Boer

Olivia Molodanof

Attorneys for Defendant

Pacific Gas and Electric Company